

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

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1 HUBEL, Magistrate Judge:

2 On January 6, 2014, the parties filed a stipulated motion for
 3 an award of attorney's fees to the plaintiff pursuant to the Equal
 4 Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). Dkt. #21. On
 5 January 21, 2014, I denied the motion without prejudice, noting the
 6 motion was "wholly unsupported." In my order, I quoted the EAJA,
 7 which requires that a motion for EAJA fees include "an itemized
 8 statement from any attorney . . . representing or appearing on
 9 behalf of the party stating the actual time expended and the rate
 10 at which fees and other expenses were computed." 28 U.S.C.
 11 § 2412(d)(2)(B).

12 The statute also requires the party seeking fees to "allege
 13 that the position of the United States was not substantially
 14 justified." *Id.* Although such an allegation may, by implication,
 15 be relieved by the Government's stipulation to an award of EAJA
 16 fees, a fee stipulation by the parties does not relieve the court
 17 of its independent duty to review a plaintiff's fee request for
 18 reasonableness. See *Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 158, 110
 19 S. Ct. 2316, 2319, 110 L. Ed. 2d 134 (1990) (observing that fee
 20 applications under the EAJA must be "supported by an itemized
 21 statement"); *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct.
 22 1933, 1939, 76 L. Ed. 2d 40 (1983) (observing that "[t]he most
 23 useful starting point for determining the amount of a reasonable
 24 fee is the number of hours reasonably expended on the litigation
 25 multiplied by a reasonable hourly rate," which requires the party
 26 seeking a fee award to "submit evidence supporting the hours worked
 27 and rates claimed"); see also *Frederick v. Comm'r, Soc. Sec.*, slip
 28 op., 2013 WL 3929973, at *1 (W.D. Mich. July 29, 2013) (noting the

1 6th Circuit "has cautioned lower courts against 'rubber stamping'
2 EAJA fee applications"; quoting *Begley v. Sec'y, Health & Human
3 Servs.*, 966 F.3d 196, 200 (6th Cir. 1992)).

4 This court takes seriously its duty to determine the
5 reasonableness of any fee request, including one under the EAJA.
6 In a case involving judicial review of an application for
7 disability benefits, the amount of EAJA fees awarded may reduce the
8 plaintiff's ultimate attorney's fee obligation if fees later are
9 awarded under 42 U.S.C. § 406(b). As such, the award of EAJA fees
10 directly impacts the benefits ultimately payable to the plaintiff.

11 However, despite this court's prior order, the plaintiff's
12 attorney has resubmitted his motion for EAJA fees without an
13 itemized statement of his time expended in the case. Dkt. #23. In
14 a declaration, counsel states the "Defendant was presented with the
15 hours Plaintiff's attorney expended on the appeal, considered the
16 attorney fee hourly rate allowed by EAJA related to the hours
17 expended, and stipulated to an attorney fee amount of \$5,906.40."
18 Dkt. #24, ¶ 4 (emphasis added). Although the parties are bound by
19 stipulations on issues of fact, the legal effect of a fact is to be
20 determined by the court, and is not the proper subject of a
21 stipulation. See, e.g., *Gresham & Co. v. United States*, 470 F.3d
22 542, 551 (Ct. Cl. 1972).

23 The plaintiff's attorney further claims he has resubmitted his
24 motion "consistent with the local rules and the practice of this
25 court." Dkt. #24, ¶¶ 5 & 6. Nowhere in the court's Local Rules is
26 an attorney relieved of the obligations of complying with statutory
27 requirements in connection with a motion for EAJA fees. As far as
28 "the practice of this court," other active members of the Social

1 Security bar routinely submit time records with motions for EAJA
2 fees, whether stipulated or not, and the undersigned routinely
3 denies unsupported EAJA fee applications that do not contain proper
4 support.

5 Accordingly, the plaintiff's resubmitted motion for EAJA fees
6 (Dkt. #24) also is **denied**, without prejudice to refiling in proper
7 form, **no later than February 24, 2014**. Any resubmittal of the
8 motion without proper support will be subject to denial *with*
9 prejudice for failure to comply with an order of the court.

10 IT IS SO ORDERED.

11 Dated this 14th day of February, 2014.

12 /s/ Dennis J. Hubel

13 _____
14 Dennis James Hubel
United States Magistrate Judge

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